

April 22, 2024

Tony Chen
7927 E. Mercer Way
Mercer Island, WA 98040

Re: 6175 SE 27th St., Mercer Island, WA 98040

Dear Mr. Chen,

I have been hired by Mike Leavitt, your neighbor to the west of your lot located along SE 27th St. on Mercer Island. I am writing to you today in hopes of coming to a mutual agreement in regards to a boundary line issue between your respective properties. As an initial matter, if you have an attorney, please forward this letter to them or provide me with their contact information so that I can direct all further communications to your attorney.

For quite some time, Mr. Leavitt has utilized a portion of the NW corner of your lot for purposes of a driveway, carport, rockery and hedge—not only himself but his predecessors in interest, dating back well in excess of ten years. The existing boundary line is well established by the hedge and rockery. A search of the aerial images on the King County parcel viewer supports shows this use has been consistent as far back as at least 2002, the furthest the aerial images go. Further, Mr. Leavitt’s driveway and eastern carport were built in their present location in the early 1980s. Property records indicate that you purchased your lot less than a year ago, though I am unaware of whether you had a survey conducted prior to your purchase—if you did you would certainly have been aware of these encroachments prior to your purchase. Unfortunately it is quite common, especially on Mercer Island, to discover that lot lines do not necessarily line up with the long established uses of the land.

As I understand, you recently applied for a permit to demolish the existing home on your lot and build a new single family home with an attached garage. Your proposed site plans indicate you intend to install a new rockery along your surveyed eastern property line running north and south between Mr. Leavitt’s lot and your lot. Doing so would cause your proposed rockery to run directly through Mr. Leavitt’s carport and driveway. More importantly, it also runs afoul to Mr. Leavitt’s established adverse possession over the portion of your lot at issue.

To establish an adverse possession claim, a party must show possession, for a ten-year period, that is (1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile. *Ofuasia v. Smurr*, 198 Wash. App. 133, 143-44, 392 P.3d 1148, 1154-55 (2017) (citing *Nickell v. Southview Homeowners Ass’n*, 167 Wash. App. 42, 50, 271 P.3d 973 (2012)); see also Wash. Rev. Code § 4.16.020. In this case there is no doubt that the adverse possession elements have easily been met by Mr. Leavitt. Mr. Leavitt has exclusively, continuously, openly and notoriously used this area over your lot for at well in excess of the ten year period and the location of the driveway, rockery and hedge has not changed position over the years. Any reasonable person passing by or viewing the property would assume that Mr. Leavitt is the owner. See *LeBleu v. Aalgaard*, 193 Wash. App. 66, 81, ¶ 38, 371 P.3d 76 (2016) (citing *Chaplin v. Sanders*, 100 Wash.2d at 863, 676 P.2d 431 (1984)). The mere existence of the rockery and hedge, as well as the carport, are prima facie evidence of hostility as they exceed the boundary lines of the property and clearly only benefit Mr. Leavitt. *Ofuasia*, at 154, ¶ 31.

Therefore, in order to formalize both of your rights in this matter, Mr. Leavitt proposes that an agreement to a boundary line adjustment based on the current location of the existing hedge/rockery be entered into. My client is willing to discuss options and work with you to adjust the boundary lines in the most efficient manner possible and with the least disruption to your building plans.

In the meantime, I must demand that you not make any changes to the rockery/hedge/driveway/carport/disputed area until this matter is resolved, and that you inform the City that your proposed development would take place *on top of your neighbor's driveway and carport*. I strongly advise you to seek the advice of a lawyer who can advise you on this matter before you make an expensive mistake by disturbing this area in any way.

Please confirm that you will agree to adjust the boundary lines and legal descriptions to conform with the historical use of the properties. If no confirmation from you is received, we will proceed with commencing a legal action to ask the Court for the relief Mr. Leavitt is seeking, as well as all legal fees incurred. It is our preference to not have to go that route and to save everyone involved the expense of a lawsuit on a matter that is already clearly established under the applicable law. Unfortunately, if we do not reach an agreement our only option will be to file a lawsuit to protect our client's property.

Please have your attorney contact me at their earliest convenience or let me know your timeline for hiring legal counsel so I may communicate that to my client. If you have any questions please let me know, I will be happy to provide any assistance I can, but do keep in mind that I cannot provide you legal guidance as I represent your neighbor on this matter.

Thank you for your consideration in this matter. I do understand that there could be some concern and confusion on your part, especially if you were unaware of the lot lines and Mr. Leavitt's rights until now. It is Mr. Leavitt's sincere hope that this matter can be mutually resolved without controversy and with limited time and resources expended by both property owners.

I look forward to hearing from you or your lawyer soon.

Thank you,



Joshua M. Moultray

PS. Attached is a snippet of the King County Parcel Viewer showing the approximate property lines overlaid on the two properties.

King County Parcel Viewer:



You can pull this up yourself at: <https://gismaps.kingcounty.gov/parcelviewer2/>